

In re Knipe, Case No. 390-36253-elp13

5/21/97

Marsh

Unpublished

The district court affirmed Judge Perris's 1996 dismissal of this Chapter 13 case for failure to make a plan payment in a timely fashion. The debtors had a history of continued and significant defaults, several dismissals, and several reinstatements, dating from 1991. The history provided sufficient evidence to support dismissal.

FILED

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CLERK, U.S. DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON

BY. *df*

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JAMES L. KNIPE and
PATRICIA J. KNIPE,

Plaintiffs,

v.

ROBERT W. MYERS, trustee, and
SEAFIRST BANK,

Defendants.

Civil No. 97-366-MA

ORDER

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1 MARSH, Judge.

2 Plaintiffs bring this action seeking review of a bankruptcy court order dismissing
3 plaintiffs' Chapter 13 bankruptcy case. Plaintiffs' bankruptcy case was filed in 1991. On
4 December 2, 1991, plaintiffs' case was dismissed for failing to pay as required by a court
5 order. On December 19, 1991, the court granted the debtors' motion to reinstate the case.
6 On May 1, 1992, the trustee moved to dismiss the case; this order was denied on June 16,
7 1992. On July 30, 1992, Security Pacific Bank moved to dismiss or convert the case; this
8 order was denied. On September 29, 1992, Mr. and Mrs. Blodgett moved to dismiss the
9 case; on October 22, 1992, Security Pacific Bank again moved to dismiss. These motions
10 were denied. On August 15, 1994, the trustee moved to dismiss the case; this motion was
11 granted and the case dismissed on January 13, 1995. On January 23, 1995, the bankruptcy
12 court granted the debtors motion to reinstate the case. On March 13, 1995, a notice of
13 noncompliance was filed and a request for dismissal. On May 17, 1995, Bank of America
14 (formerly Security Pacific Bank) moved to dismiss the case. On November 20, 1995, the
15 trustee moved for a conditional order of dismissal. On March 8, 1996, the trustee filed a
16 statement of non-compliance regarding the motion for order of dismissal. The trustee's
17 statement sought dismissal of the case for the debtors' failure to make full plan payment
18 when due in December 1995. At a May 2, 1996 hearing on this motion, Judge Perris
19 informed debtor that any future defaults with respect to plan payments would be grounds for
20 dismissal. On June 20, 1996, Bank of America again moved to dismiss the case for failure
21 to make a payment as required under the plan; the trustee joined in this motion.

22 On July 12, 1996, Judge Perris wrote to debtor's attorney and advised him that she
23 would grant the motion to dismiss, based on debtor's failure to make the June payment in a
24 timely fashion. Judge Perris noted that "[g]iven the long history in the case as well as my
25 admonition to Ms. Knipe at a prior hearing that future defaults would not be tolerated, I have
26 concluded that the motion to dismiss . . . should be granted." Judge Perris ordered that the
27 dismissal order be filed in 15 days unless the debtor filed a motion to convert the case. On

28 2 - ORDER

1 July 31, 1996, Judge Perris' order of dismissal was filed. No motion to convert was filed.

2 The district court must review the bankruptcy court's findings of fact under the clearly
3 erroneous standard and its conclusions of law de novo. In re Mellor, 734 F.2d 1396, 1399
4 (9th Cir. 1984). Decisions committed to the discretion of the bankruptcy court are reversed
5 only where based on an erroneous conclusion of law or when the record contains no evidence
6 on which the bankruptcy court could reasonably have based its decision. In re Conejo
7 Enterprises, Inc., 96 F.3d 346, 351 (9th Cir. 1996)(quotations omitted).

8 A court may dismiss a Chapter 13 bankruptcy case for cause including unreasonable
9 delay by the debtor that is prejudicial to creditors; nonpayment of fees and charges; failure
10 to make timely payments; or material default by the debtor with respect to a term of a
11 confirmed plan. 11 U.S.C. § 1307(c).

12 Judge Perris dismissed plaintiffs' case in July 1996 following plaintiffs' failure to
13 make a timely payment in June 1996. As noted by Judge Perris, plaintiffs were specifically
14 warned on May 2, 1996, that any failures to make timely payments would be grounds for
15 dismissal. Plaintiffs do not dispute that they defaulted on their plan payments following the
16 warning. Additionally, the history of the case shows continued and significant defaults by
17 debtors, several dismissals of the case and several reinstatements. The record in this case,
18 including the history of dismissals and reinstatements, the debtors' numerous defaults, and
19 the warning from Judge Perris, provides ample evidence to support the bankruptcy court's
20 decision to dismiss the case. Accordingly, the bankruptcy court's order dismissing plaintiff's
21 case is AFFIRMED, and plaintiff's case is dismissed.

22 IT IS SO ORDERED.

23 DATED this 21 day of May, 1997.

24
25 Malcolm F. Marsh
26 Malcolm F. Marsh
27 United States District Judge
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